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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1149 of 1983
With
FIRST APPEAL No. 1462 of 1983
To
FIRST APPEAL No. 1467 of 1983
With
FIRST APPEAL No. 990 of 1984
To
FIRST APPEAL No. 992 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL FIRE AND GENERAL INSURANCE CO.LTD. - Appellant(s)
Versus
SHANTABEN AMBALAL SHAH & 5 - Defendant(s)

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Appearance :

MR MS ARCHANA ACHARYA ON BEHALF OF MR SB VAKIL for Appellant(s) : 1,
MR VM TRIVEDI for Defendant(s) : 1 - 2.
MR BH UPADHYAY for Defendant(s) : 1 - 2.
MS MAYA DESAI ON BEHALF OF MR MD PANDYA for Defendant(s) : 3,
NOTICE SERVED for Defendant(s) : 4 - 5, 5.2.2,5.2.3 - 6.
None for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/06/2007

ORAL JUDGMENT

1. The appellant – Insurance Company, being aggrieved by the impugned Judgment and Award dtd.17/2/1983 passed by the Motor Accident Claims Tribunal (Main), Bhavnagar in Motor Accident Claim Petition Nos.157, 158, 159, 160 of 1981 and, 11, 12 and 13 of 1982, is before this Court with a submission that the liability of the Insurance Company was limited to the extent of 15,000=00 per person, therefore, the tribunal could not fasten the entire liability on the head of the Insurance Company. Ms.Archana Acharya, learned counsel for the appellant submits that from a perusal of the policy, it would clearly appear that the liability of the Insurance Company was limited and the tribunal could not have shifted the entire liability.

2. Ms.Maya Desai, learned counsel for the respondent Nos.3 & 4 in some cases and for respondent Nos.2 and 3 in some cases, submits that the issue relating to limited liability was not raised before the tribunal, therefore, the Insurance Company cannot be allowed to raise this issue for the first time before the High Court.

3. Ms.Acharya, learned counsel for the appellant, however, submits that even if an issue was not cast in relation to the limited liability of the Insurance Company, but in view of the facts floating on the surface of the records, this question should be considered by this Court.

4. From a perusal of the impugned Judgment and Award, it would appear that such a plea was not raised. Assuming that the plea was not raised in express words, then too, the present appellant was obliged to ask the tribunal that in view of the pleadings raised by the Insurance Company, proper issues be cast. No issue in relation to limited liability

of the Insurance Company has been cast. From the impugned Judgment and Award delivered by the learned tribunal, it does not appear that the parties pressed themselves to this question or even submitted their arguments before the learned tribunal that the liability of the Insurance Company was limited. I have gone through the entire Judgement and Award, but I am unable to find any submission on behalf of the appellant that their liability was limited.

5. It would be trite to say that in a given case when certain questions depending upon the facts are not raised before the tribunal, then, the appellate court shall not allow the parties to raise such question. In the present matter, policy only was produced before the tribunal, but, the contents of the same were not proved by examining the witness who could say that the liability of the Insurance Company was limited.

6. In absence of a plea, issue, argument, discussion and finding by the learned tribunal, it would not be

proper on the part of this Court to allow the Insurance Company to raise the issue of limited liability for the first time before this Court.

7. All the appeals deserve to and are accordingly dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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